



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

Felgates Creek and Indian Field Creek along the York River in Yorktown, Virginia;
Restricted Area.

AGENCY: U.S. Army Corps of Engineers, Department of Defense.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing to amend an existing permanent restricted area in the waters of Felgates Creek and Indian Field Creek along the York River in Yorktown, Virginia. Naval Weapons Station Yorktown is requesting the Corps of Engineers modify the existing restricted area to include areas historically noted on nautical charts as closed to the public and traditionally enforced by the Commander, Naval Weapons Station Yorktown. Naval Weapons Station Yorktown provides ordnance logistics, technical, supply and related services to the Atlantic Fleet. Felgates Creek and Indian Field Creek are within a designated Level Two Restricted Area as defined by the Navy Physical Security and Law Enforcement Program. In addition, Felgates Creek and Indian Field Creek are within explosive arcs from various munitions points on Naval Weapons Station Yorktown. Naval Weapons Station Yorktown is seeking authorization to expand the existing restricted area to enhance safety and security.

DATES: Written comments must be submitted on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2011-0038, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov> . Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil . Include the docket number, COE-2011-0038, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO-R (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2011-0038. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov> , including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of

your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov . All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922, or Ms. Nicole Woodward, Corps of Engineers, Norfolk District, Regulatory Branch, at 757-201-7122.

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this regulatory action is to amend an existing restricted area to include areas historically noted on nautical charts as closed to the public and traditionally enforced by the Commander, Naval Weapons Station Yorktown.

The Corps authority to amend this restricted area is Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3).

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps of Engineers is proposing amendments to regulations in 33 CFR Part 334 for a permanent restricted area in the waters of Felgates Creek and Indian Field Creek along the York River in Yorktown, Virginia. Naval Weapons Station Yorktown provides ordnance logistics, technical, supply and related services to the Atlantic Fleet. Felgates Creek and Indian Field Creek are within a designated Level Two Restricted Area as defined by OPNAVIST 5530.14E, Navy Physical Security and Law Enforcement Program. In addition, Felgates Creek and Indian Field Creek are within explosive arcs from various munitions points on Naval Weapons Station Yorktown. Naval Weapons Station Yorktown is seeking authorization to expand the existing restricted area to enhance safety and security. The Navy has also requested that these waterways shall remain restricted pursuant to authorities granted in 33 U.S.C. 1 during the rulemaking process. The temporary restricted areas were established as a separate action announced by public notice issued by the Norfolk District on September 12, 2011.

Procedural Requirements

a. Review under Executive Order 12866.

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act.

This proposed rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of

small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the public notice comment period, the Corps expects that the amendment of this restricted area would have practically no economic impact on the public, no anticipated navigational hazard, or interference with existing waterway traffic. This proposed rule if adopted, will have no significant economic impact on small entities.

c. Review under the National Environmental Policy Act.

Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact to the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered. After it is prepared, it may be reviewed at the District office listed at the end of the FOR FURTHER INFORMATION CONTACT section, above.

d. Unfunded Mandates Act.

This proposed rule does not impose an enforceable duty among the private sector and, therefore, it is not a Federal private sector mandate and it is not subject to the requirements of either Section 202 or Section 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334 -- DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for 33 CFR part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. Revise § 334.260 to read as follows:

334.260 York River, Va.; naval restricted areas.

(a) The areas — (1) Naval mine service-testing area (prohibited). A rectangular area surrounding Piers 1 and 2, Naval Weapons Station, and extending upstream therefrom, beginning at a point on the shore line at latitude 37°15'25" N, longitude 76°32'32" W; thence to latitude 37°15'42" N, longitude 76°32'06" W; thence to latitude 37°15'27" N, longitude 76°31'48" W; thence to latitude 37°15'05" N, longitude 76°31'27" W; thence to a point on the shore line at latitude 37°14'51" N, longitude 76°31'50" W; and thence along the shore line to the point of beginning.

(2) Naval mine service-testing area (restricted). A rectangular area adjacent to the northeast boundary of the prohibited area described in paragraph (a)(1) of this section, beginning at latitude 37°16'00" N, longitude 76°32'29" W; thence to latitude 37°16'23" N, longitude 76°32'00" W; thence to latitude 37°15'27" N, longitude 76°30'54" W; thence to latitude 37°15'05" N, longitude 76°31'27" W; thence to latitude 37°15'27" N, longitude 76°31'48" W; thence to latitude 37°15'42" N, longitude 76°32'06" W; thence to latitude 37°15'40" N, longitude 76°32'09" W; and thence to the point of beginning.

(3) Explosives-Handling Berth (Naval). A circular area of 600 yards radius with its center at latitude 37°13'56" N, longitude 76°28'48" W.

(4) Felgates Creek (prohibited). Navigable waters of the United States as defined at 33 CFR part 329 within Felgates Creek from the boundary fence line at the mouth to the mean high water line of the head and all associated tributaries. The area contains the entirety of Felgates Creek and all associated tributaries south of the line which begins at latitude 37°16'24" N, longitude 76°35'12" W and extends east to latitude 37°16'21" N, longitude 76°35'00" W.

(5) Indian Field Creek (prohibited). Navigable waters of the United States as defined at 33 CFR part 329 within Indian Field Creek from the boundary fence line at the mouth to the mean high water line of the head and all associated tributaries. The area contains the entirety of Indian Field Creek and all associated tributaries south of the line which begins at latitude 37°16'05" N, longitude 76°33'29" W and extends east to latitude 37°16'01" N, longitude 76°33'22" W.

(b) The regulations. (1) All persons and all vessels other than naval craft are forbidden to enter the prohibited area described in paragraph (a)(1) of this section.

(2) Trawling, dragging, and net-fishing are prohibited, and no permanent obstructions may at any time be placed in the area described in paragraph (a)(2) of this section. Upon official notification, any vessel anchored in the area and any person in the area will be required to vacate the area during the actual mine-laying operation. Persons and vessels entering the area during mine-laying operations by aircraft must proceed directly through the area without delay, except in case of emergency. Naval authorities are required to publish advance notice of mine-laying and/or retrieving operations scheduled to be carried on in the area, and during such published periods of operation,

fishing or other aquatic activities are forbidden in the area. No vessel will be denied passage through the area at any time during either mine-laying or retrieving operations.

(3) The Explosives-Handling Berth (Naval) described in paragraph (a)(3) of this section is reserved for the exclusive use of naval vessels and except in cases of emergency no other vessel shall anchor therein without the permission of local naval authorities, obtained through the Captain of the Port, U.S. Coast Guard, Norfolk, Virginia. There shall be no restriction on the movement of vessels through the Explosive-Handling Berth.

(4) Vessels shall not be anchored, nor shall persons in the water approach within 300 yards of the perimeter of the Explosives-Handling Berth (Naval) when that berth is occupied by a vessel handling explosives.

(5) All persons and all vessels are forbidden to enter the prohibited areas described in paragraphs (a)(4) and (a)(5) of this section without prior permission of the enforcing agency.

(6) The regulations of this section shall be enforced by the Commander, Naval Weapons Station Yorktown, Virginia, and such agencies as he/she may designate.

Dated: March 29, 2012

Approved: _____

Richard C. Lockwood
Chief, Operations and Regulatory
Directorate of Civil Works

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